

# SENATE BILL No. 1023

June 8, 2016, Introduced by Senators HERTEL and SCHUITMAKER and referred to the Committee on Health Policy.

A bill to amend 1977 PA 72, entitled "The medicaid false claim act," by amending sections 2, 7, 10a, 10c, and 12 (MCL 400.602, 400.607, 400.610a, 400.610c, and 400.612), as amended by 2008 PA 421.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2. As used in this act:

2       (a) "Benefit" means the receipt of money, goods, or anything  
3 of pecuniary value.

4       (b) "Claim" means any ~~attempt to cause the department of~~  
5 ~~community health to pay out sums of money under the social welfare~~  
6 ~~act.~~ **REQUEST OR DEMAND MADE FOR A MEDICAID PAYMENT, WHETHER UNDER**  
7 **CONTRACT OR OTHERWISE, FOR MONEY OR PROPERTY THAT IS EITHER OF THE**  
8 **FOLLOWING:**

1 (i) PRESENTED TO AN OFFICER, EMPLOYEE, OR AGENT OF THE STATE.

2 (ii) MADE TO A CONTRACTOR, GRANTEE, OR OTHER RECIPIENT IF THE  
3 MONEY OR PROPERTY REQUESTED OR DEMANDED IS USED ON THE STATE'S  
4 BEHALF OR TO ADVANCE A STATE PROGRAM OR INTEREST AND THE STATE  
5 PROVIDES OR HAS PROVIDED ANY PORTION OF THE MONEY OR PROPERTY  
6 REQUESTED OR DEMANDED OR WILL REIMBURSE THE CONTRACTOR, GRANTEE, OR  
7 OTHER RECIPIENT FOR ANY PORTION OF THE MONEY OR PROPERTY.

8 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND HUMAN  
9 SERVICES.

10 (D) ~~(e)~~"Deceptive" means making a claim or causing a claim to  
11 be made under the social welfare act that contains a statement of  
12 fact or that fails to reveal a fact, which statement or failure  
13 leads the department to believe the represented or suggested state  
14 of affair to be other than it actually is.

15 (E) ~~(d)~~"False" means wholly or partially untrue or deceptive.

16 (F) ~~(e)~~"Health facility or agency" means ~~a health facility or~~  
17 ~~agency,~~ **THAT TERM** as defined in section 20106 of the public health  
18 code, 1978 PA 368, MCL 333.20106.

19 (G) ~~(f)~~"Knowing" and "knowingly" ~~means~~ **MEAN** that a person is  
20 in possession of facts under which he or she is aware or should be  
21 aware of the nature of his or her conduct and that his or her  
22 conduct is substantially certain to cause the payment of a ~~medicaid~~  
23 **MEDICAID** benefit. Knowing or knowingly includes acting in  
24 deliberate ignorance of the truth or falsity of facts or acting in  
25 reckless disregard of the truth or falsity of facts. Proof of  
26 specific intent to defraud is not required.

27 (H) "MATERIAL" MEANS TO HAVE A NATURAL TENDENCY TO INFLUENCE,

1 OR BE CAPABLE OF INFLUENCING, THE PAYMENT OR RECEIPT OF MONEY OR  
2 PROPERTY.

3 (I) ~~(g)~~—"Medicaid benefit" means a benefit paid or payable  
4 under a program for medical assistance for the medically indigent  
5 in accordance with the social welfare act.

6 (J) "OBLIGATION" MEANS AN ESTABLISHED DUTY, WHETHER OR NOT  
7 FIXED, ARISING FROM AN EXPRESS OR IMPLIED CONTRACTUAL, GRANTOR-  
8 GRANTEE, OR LICENSOR-LICENSEE RELATIONSHIP, FROM A FEE-BASED OR  
9 SIMILAR RELATIONSHIP, FROM STATUTE OR REGULATION, OR FROM THE  
10 RETENTION OF ANY OVERPAYMENT.

11 (K) "ORIGINAL SOURCE" MEANS EITHER OF THE FOLLOWING:

12 (i) AN INDIVIDUAL WHO, BEFORE PUBLIC DISCLOSURE, VOLUNTARILY  
13 DISCLOSED TO THE STATE OR THE DEPARTMENT THE INFORMATION ON WHICH  
14 THE ALLEGATION OR TRANSACTION IN A CLAIM IS BASED.

15 (ii) AN INDIVIDUAL WHO HAS KNOWLEDGE THAT IS INDEPENDENT OF  
16 AND MATERIALLY ADDS TO THE PUBLICLY DISCLOSED ALLEGATION OR  
17 TRANSACTION, AND WHO HAS VOLUNTARILY PROVIDED THE INFORMATION TO  
18 THE STATE OR THE DEPARTMENT BEFORE FILING AN ACTION.

19 (L) ~~(h)~~—"Person" means an individual, corporation,  
20 association, partnership, or other legal entity.

21 (M) ~~(i)~~—"Social welfare act" means the social welfare act,  
22 1939 PA 280, MCL 400.1 to 400.119b.

23 Sec. 7. (1) A person shall not make or present or cause to be  
24 made or presented ~~to an employee or officer of this state~~ a claim  
25 under the social welfare act, ~~1939 PA 280, MCL 400.1 to 400.119b,~~  
26 upon or against the state, knowing the claim to be false.

27 (2) A person shall not make or present or cause to be made or

1 presented a claim under the social welfare act ~~, 1939 PA 280, MCL~~  
2 ~~400.1 to 400.119b,~~ that he or she knows falsely represents that the  
3 goods or services for which the claim is made were medically  
4 necessary in accordance with professionally accepted standards.  
5 Each claim violating this subsection is a separate offense. A  
6 health facility or agency is not liable under this subsection  
7 unless the health facility or agency, ~~pursuant~~ **ACCORDING** to a  
8 conspiracy, combination, or collusion with a physician or other  
9 provider, falsely represents the medical necessity of the  
10 particular goods or services for which the claim was made.

11 (3) A person shall not knowingly make, use, or cause to be  
12 made or used a false record or statement **MATERIAL** to ~~conceal,~~  
13 ~~avoid, or decrease~~ an obligation to pay or transmit money or  
14 property to the state pertaining to a claim presented under the  
15 social welfare act **OR KNOWINGLY CONCEAL OR KNOWINGLY AND IMPROPERLY**  
16 **AVOID OR DECREASE AN OBLIGATION TO PAY OR TRANSMIT MONEY OR**  
17 **PROPERTY TO THE STATE PERTAINING TO A CLAIM PRESENTED UNDER THE**  
18 **SOCIAL WELFARE ACT.**

19 (4) A person ~~who~~ **THAT** violates this section is guilty of a  
20 felony punishable by imprisonment for not more than 4 years or a  
21 fine of not more than \$50,000.00, or both.

22 Sec. 10a. (1) Any person may bring a civil action in the name  
23 of this state under this section to recover losses that this state  
24 suffers from a violation of this act. A suit filed under this  
25 section shall not be dismissed unless the attorney general has been  
26 notified and had an opportunity to appear and oppose the dismissal.  
27 The attorney general waives the opportunity to oppose the dismissal

1 if it is not exercised within 28 days of receiving notice.

2 (2) If a person other than the attorney general initiates an  
3 action under this section, the complaint shall remain under seal  
4 and the clerk shall not issue the summons for service on the  
5 defendant until after the time for the attorney general's election  
6 under subsection (3) expires. At the time of filing the complaint,  
7 the person shall serve a copy of the complaint on the attorney  
8 general and shall disclose, in writing, substantially all material  
9 evidence and information in the person's possession supporting the  
10 complaint to the attorney general.

11 (3) The attorney general may elect to intervene in an action  
12 under this section. Before the expiration of the later of 90 days  
13 after service of the complaint and related materials or any  
14 extension of the 90 days that is requested by the attorney general  
15 and granted by the court, the attorney general shall notify the  
16 court and the person initiating the action of 1 of the following:

17 (a) That the attorney general will proceed with the action for  
18 this state and have primary responsibility for proceeding with the  
19 action.

20 (b) That the attorney general declines to take over the action  
21 and the person initiating the action has the right to proceed with  
22 the action.

23 (4) If an action is filed under this section, a person other  
24 than the attorney general shall not intervene in the action or  
25 bring another action on behalf of this state based on the facts  
26 underlying the action.

27 (5) If the attorney general elects to proceed with the action

1 under subsection (3) or (6), the attorney general has primary  
2 responsibility for prosecuting the action and may do all of the  
3 following:

4 (a) Agree to dismiss the action, notwithstanding the objection  
5 of the person initiating the action, but only if that person has  
6 been notified of and offered the opportunity to participate in a  
7 hearing on the motion to dismiss.

8 (b) Settle the action, notwithstanding the objection of the  
9 person initiating the action, but only if that person has been  
10 notified of and offered the opportunity to participate in a hearing  
11 on the settlement and if the court determines that the settlement  
12 is fair, adequate, and reasonable under the circumstances. Upon a  
13 showing of good cause, the settlement hearing may be held in  
14 camera.

15 (c) Request the court to limit the participation of the person  
16 initiating the action. If the attorney general demonstrates that  
17 unrestricted participation by the person initiating the action  
18 during the litigation would interfere with or unduly delay the  
19 attorney general's prosecution of the case or would be repetitious,  
20 irrelevant, or unduly harassing, the court may do any of the  
21 following:

22 (i) Limit the number of the person's witnesses.

23 (ii) Limit the length of the testimony of the person's  
24 witnesses.

25 (iii) Limit the person's cross-examination of witnesses.

26 (iv) Otherwise limit the person's participation in the  
27 litigation.

1           (6) If the attorney general notifies the court that he or she  
2 declines to take over the action under subsection (3), the person  
3 who initiated the action may proceed with the action. At the  
4 attorney general's request and expense, the attorney general shall  
5 be provided with copies of all pleadings filed in the action and  
6 copies of all deposition transcripts. Notwithstanding the attorney  
7 general's election not to take over the action, the court may  
8 permit the attorney general to intervene in the action at any time  
9 upon a showing of good cause and, subject to subsection (7),  
10 without affecting the rights or status of the person initiating the  
11 action.

12           (7) Upon a showing, conducted in camera, that actions of the  
13 person initiating the action during discovery would interfere with  
14 the attorney general's investigation or prosecution of a criminal  
15 or civil matter, the court may stay the discovery for not more than  
16 90 days. The court may extend the stay upon a further showing that  
17 the attorney general is pursuing the investigation or proceeding  
18 with reasonable diligence and the discovery would interfere with  
19 the ongoing investigation or proceeding.

20           (8) As an alternative to an action permitted under this  
21 section, the attorney general may pursue a violation of this act  
22 through any alternate remedy available to this state, including an  
23 administrative proceeding. If the attorney general pursues an  
24 alternate remedy, a person who initiated an action under this  
25 section shall have equivalent rights in that proceeding to the  
26 rights that the person would have had if the action had continued  
27 under this section to the extent consistent with the law governing

1 that proceeding. Findings of fact and conclusions of law that  
 2 become final in an alternative proceeding shall be conclusive on  
 3 the parties to an action under this section. For purposes of this  
 4 subsection, a finding or conclusion is final if it has been finally  
 5 determined on appeal to the appropriate court, if the time for  
 6 filing an appeal with respect to the finding or conclusion has  
 7 expired, or if the finding or conclusion is not subject to judicial  
 8 review.

9 (9) Subject to subsections (10) and (11), if a person other  
 10 than the attorney general or the attorney general prevails in an  
 11 action that the person initiates under this section, **SEPARATE FROM**  
 12 **ANY MONETARY PROCEEDS AWARDED UNDER THIS ACT**, the court shall award  
 13 the person necessary expenses, costs, reasonable attorney fees,  
 14 and, based on the amount of effort involved, the following  
 15 percentage of the monetary proceeds resulting from the action or  
 16 any settlement of the claim:

17 (a) If the attorney general intervenes, **NOT LESS THAN** 15% to  
 18 25%.

19 (b) If the attorney general does not intervene, **NOT LESS THAN**  
 20 25% to 30%.

21 (10) ~~If~~ **UNLESS OPPOSED BY THE ATTORNEY GENERAL, IF** the court  
 22 finds an action under this section ~~to be~~ **IS NOT** based primarily on  
 23 **INFORMATION** ~~disclosure of specific information that was not~~  
 24 provided by the person bringing the action, ~~such as~~ **BUT IS BASED**  
 25 **PRIMARILY ON DISCLOSURE OF SPECIFIC** information ~~from~~ **RELATING TO AN**  
 26 **ALLEGATION OR TRANSACTION IN** a **STATE** criminal, civil, or  
 27 administrative hearing in a ~~WHICH THE~~ state or federal department



1 ~~or agency,~~ **ITS AGENT IS A PARTY,** a **STATE** legislative **OR OTHER STATE**  
2 report, hearing, audit, or investigation, or the news media, and  
3 the attorney general proceeds with the action, the court may award  
4 the person bringing the action no more than 10% of the monetary  
5 recovery in addition to reasonable attorney fees, necessary  
6 expenses, and costs.

7 (11) If the court finds that the person bringing an action  
8 under this section planned and initiated the conduct upon which the  
9 action is brought, then the court may reduce or eliminate, as it  
10 considers appropriate, the share of the proceeds of the action that  
11 the person would otherwise be entitled to receive. A person who is  
12 convicted of criminal conduct arising from a violation of this act  
13 shall not initiate or remain a party to an action under this  
14 section and is not entitled to share in the monetary proceeds  
15 resulting from the action or any settlement under this section.

16 (12) ~~A IN NO EVENT MAY A~~ person ~~other than the attorney~~  
17 ~~general shall not~~ bring an action under this section that is based  
18 on allegations or transactions that are the subject of a civil suit  
19 or an administrative civil money penalty proceeding to which this  
20 state ~~or the federal government~~ is already a party. The court shall  
21 dismiss an action brought in violation of this section.

22 (13) Unless the person is the original source of the  
23 information, a person, other than the attorney general, shall not  
24 initiate an action under this section based upon the public  
25 disclosure of allegations or transactions in a criminal, civil, or  
26 administrative hearing, in a state or federal legislative,  
27 investigative, or administrative report, hearing, audit, or

1 investigation, or from the news media. ~~The person is the original~~  
2 ~~source if he or she had direct and independent knowledge of the~~  
3 ~~information on which the allegations are based and voluntarily~~  
4 ~~provided the information to the attorney general before filing an~~  
5 ~~action based on that information under this section.~~

6 (14) This state and the attorney general are not liable for  
7 any expenses, costs, or attorney fees that a person incurs in  
8 bringing an action under this section. Any amount awarded to a  
9 person initiating an action to enforce this act is payable solely  
10 from the proceeds of the action or settlement.

11 (15) If a person proceeds with an action under this section  
12 after being notified that the attorney general has declined to  
13 intervene and the court finds that the claim was ~~frivolous, as~~  
14 ~~defined in section 2591 of the revised judicature act of 1961, 1961~~  
15 ~~PA 236, MCL 600.2591, CLEARLY FRIVOLOUS, CLEARLY VEXATIOUS, OR~~  
16 **BROUGHT PRIMARILY FOR THE PURPOSE OF HARASSMENT**, the court shall  
17 award the prevailing defendant actual and reasonable attorney fees  
18 and expenses and, in addition, shall impose a civil fine of not  
19 more than \$10,000.00. The civil fine shall be deposited into the  
20 Michigan ~~medicaid~~ **MEDICAID** benefits trust fund established in  
21 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

22 **(16) FOR THE PURPOSE OF THE STATUTE OF LIMITATIONS, ANY**  
23 **GOVERNMENT COMPLAINT IN INTERVENTION, WHETHER FILED SEPARATELY OR**  
24 **AS AN AMENDMENT TO THE RELATOR'S COMPLAINT, SHALL RELATE BACK TO**  
25 **THE FILING DATE OF THE RELATOR'S COMPLAINT, TO THE EXTENT THAT THE**  
26 **CLAIM OF THE GOVERNMENT ARISES OUT OF THE CONDUCT, TRANSACTION, OR**  
27 **OCCURRENCE SET FORTH, OR ATTEMPTED TO BE SET FORTH, IN THE**

1 RELATOR'S COMPLAINT.

2 (17) ANY INFORMATION OBTAINED BY THE ATTORNEY GENERAL OR HIS  
3 OR HER DESIGNEE UNDER THIS SECTION MAY BE SHARED WITH ANY QUI TAM  
4 REALTOR IF THE ATTORNEY GENERAL OR DESIGNEE DETERMINES IT IS  
5 NECESSARY AS PART OF A MEDICAID FALSE CLAIMS ACT INVESTIGATION.

6 Sec. 10c. (1) An employer shall not discharge, demote,  
7 suspend, threaten, harass, or in any other manner, discriminate  
8 against an employee, **CONTRACTOR, OR AGENT**, in the terms and  
9 conditions of employment because the employee, **CONTRACTOR, OR**  
10 **AGENT**, engaged in lawful acts, including initiating, assisting in,  
11 or participating in the furtherance of an action under this act or  
12 because the employee, **CONTRACTOR, OR AGENT**, cooperates with or  
13 assists in an investigation under this act. This prohibition does  
14 not apply to an employment action against an employee **OR AGENT OR**  
15 **AN ACTION RELATING TO A CONTRACT FOR A CONTRACTOR** who the court  
16 finds brought a ~~frivolous claim, as defined in section 2591 of the~~  
17 ~~revised judicature act of 1961, 1961 PA 236, MCL 600.2591;~~ **CLAIM**  
18 **THAT WAS CLEARLY FRIVOLOUS, CLEARLY VEXATIOUS, OR BROUGHT PRIMARILY**  
19 **FOR THE PURPOSE OF HARASSMENT;** the court finds to have planned and  
20 initiated the conduct upon which the action is brought; or is  
21 convicted of criminal conduct arising from a violation of this act.

22 (2) ~~An employer who~~ **A PERSON THAT** violates this section is  
23 liable to the employee, **CONTRACTOR, OR AGENT** for all of the  
24 following:

25 (a) Reinstatement to the employee's **OR AGENT'S** position  
26 without loss of seniority **OR REINSTATEMENT OR RENEWAL OF THE**  
27 **CONTRACT.**

1 (b) Two times the amount of lost back pay OR IN THE CASE OF A  
2 CONTRACTOR, 2 TIMES THE AMOUNT OF THE DAMAGES ARISING FROM THE  
3 BREACH OF CONTRACT.

4 (c) Interest on the back pay OR IN THE CASE OF A CONTRACTOR,  
5 INTEREST ON THE DAMAGES ARISING FROM THE BREACH OF CONTRACT.

6 (d) Compensation for any special damages, INCLUDING REASONABLE  
7 ATTORNEY FEES AND LITIGATION COSTS.

8 (e) Any other relief necessary to make the employee,  
9 CONTRACTOR, OR AGENT, whole.

10 (3) A CIVIL ACTION UNDER THIS SUBSECTION MAY NOT BE BROUGHT  
11 MORE THAN 3 YEARS AFTER THE DATE WHEN THE RETALIATION OCCURRED.

12 Sec. 12. (1) A person who receives a benefit that the person  
13 is not entitled to receive by reason of fraud or making a  
14 fraudulent statement or knowingly concealing a material fact, or  
15 who engages in any conduct prohibited by this statute, shall  
16 forfeit and pay to the state the full amount received, and for each  
17 claim a civil penalty of not less than ~~\$5,000.00~~ \$5,500.00 or more  
18 than ~~\$10,000.00~~ \$11,000.00 plus triple the amount of damages  
19 suffered by the state as a result of the conduct by the person.

20 (2) THE PENALTIES UNDER THIS SECTION MAY BE ADJUSTED FOR  
21 INFLATION IN THE SAME MANNER AS PROVIDED FOR FEDERAL PENALTIES  
22 UNDER THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990,  
23 PUBLIC LAW 101-410.

24 (3) ~~(2)~~—A criminal action need not be brought against the  
25 person for that person to be civilly liable under this section.

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.